

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO:

State of Montana v. Abbott Labs, Inc., et al., 02-
CV-12084-PBS

*State of Nevada v. American Home Products
Corp., et al.*, 02-CV-12086

Civil Action No. 01-CV-12257-PBS

**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE A CONSOLIDATED
REPLY MEMORANDUM IN RESPONSE TO THE AMICI MEMORANDA FILED BY
THE COMMONWEALTH OF MASSACHUSETTS AND THE UNITED STATES**

Pursuant to Local Rule 7.1(B)(3), the defendants in the above-captioned cases (collectively "Defendants") hereby jointly request leave to file a consolidated reply to the Memorandum of the Commonwealth of Massachusetts as *Amicus Curiae* in Opposition to the Defendants' Motions to Dismiss On the Grounds of Preemption and the Brief of the United States as *Amicus Curiae*. In support of this motion, Defendants state:

1. On September 15, 2003, Defendants filed a Motion to Dismiss the State of Montana's Second Amended Complaint and the State of Nevada's Amended Complaint. Plaintiffs opposed Defendants' motions on October 10, 2003, and Defendants replied on November 14, 2003. Plaintiffs filed a surreply on November 25, 2003.

2. On December 12, 2003, this Court heard oral argument on the motions, which argument focused in part on whether the federal Medicaid statute, 42 U.S.C. § 1396r-8, preempts state law fraud claims based on Defendants' best price reports to the United States Centers for Medicare & Medicaid Services.
3. On January 8, 2004, this Court wrote to the United States Secretary of Health and Human Services to request that the Department of Health and Human Services submit an *amicus curiae* brief in the above-captioned cases on the federal preemption issue.
4. On January 9, 2004, the Commonwealth of Massachusetts, as *amicus curiae*, filed an Opposition to the Defendants' Motions to Dismiss on the Grounds of Preemption.
5. On March 18, 2004, the United States filed a Brief as *Amicus Curiae* on the federal preemption issue.
6. Defendants now seek leave to file by April 9, 2004 a consolidated memorandum, not to exceed twenty pages in length, in response to the *amici* memoranda submitted by the Commonwealth of Massachusetts and the United States. These *amici* memoranda were filed subsequent to the previously completed briefing and oral argument on the federal preemption issue, and Defendants therefore seek an opportunity to respond.
7. Plaintiffs assent to this motion to the extent that they are also granted leave to file by April 9, 2004 a memorandum, not to exceed twenty pages in length, in response to the *amici* memoranda submitted by the Commonwealth of Massachusetts and the United States. Defendants assent to Plaintiffs' request.

WHEREFORE, Defendants respectfully move that this Court grant them leave to file a consolidated memorandum in response to the *amici* memoranda filed by the Commonwealth of Massachusetts and the United States. Defendants further request oral argument on this matter.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

Undersigned counsel hereby certify that they have conferred with Plaintiffs in a good faith attempt to narrow or resolve the issues presented by this motion.

Respectfully submitted,

/s/ John T. Montgomery

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Dated: March 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2004, I caused a true and correct copy of the Defendants' Unopposed Motion for Leave to File a Consolidated Reply Memorandum in Response to the Amici Memoranda Filed by the Commonwealth of Massachusetts and the United States to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ John R. Therien

John R. Therien